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File No. O. Prev. of Adulteration 48

Legal Department

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Subject:— O. Prevention of Adulteration Opinions under the Prevention of Adulteration Act 1935.

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C O N T E N T S.

Legal Department File No. Q. Prev. of Adulteration/48.

Sr. No.	R.I./Q.No.	Subject	Pages.
		Opinions under the Prevention of Adulteration Act, 1935.	
1.	Q.No. 668 16-1-48.	Section 4(1)(a). Master's liability for adulteration done by servant.	1-3.

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Office of the R.I.A.

Masters liability for adulteration done by servant.

The Bombay Prevention of Adulteration Act, 1936.

With a view to ensure the supply of pure milk, the Chairman of the Surat City Co-operative Milk Supply Society, Ltdk, proposes to purchase milk from those who are prepared to milk their buffaloes in the presence of the Secretary of the Society, but desires that the Secretary or the Manager should not be prosecuted for adulteration made subsequently by the servants in the course of the distribution of milk. The question raised for the consideration of the R.I.A. is whether in view of the precautionary measures proposed to be adopted by the Society, the Secretary or Manager of the Society can be prosecuted for the adulteration of Milk if such adulteration is detected in the vessels of the distributors of milk after they have left the shop.

Where an act of a servant is criminal because it contravenes the provisions of a statute, the liability of the master depends upon the language of the particular statute. For this purpose it is necessary to distinguish the following cases namely;-

(1) The statute may make the master liable for his servant's act in any event. In this case it is only necessary to show that the act was done by the servant in the course of his employment and within the scope of his general authority. The master cannot, therefore, escape criminal responsibility on the ground that he himself had acted in good faith and had forbidden the servant to do act or that he was unaware of what the servant had done.

(2) The statute may make the master liable for his servant's act, unless he can prove that he himself is not in default.

(3) The statute may make the masters liable for his servant's act only if the prosecution proves affirmatively that he knew either actually or constructively of the servant's act or that he connived at its commission.

(4) The statute may make the master liable for his servant's act but only for his own. (vide Halsbury's Laws of England Vol. 22 page 232).

Section 4(1)(a) of the Bombay Prevention of Adulteration Act, 1938, provides that any personwho sells or causes to be sold or offers for sale to the prejudice of the purchaser any article of food which is not of the nature, substance or quality demanded by or on behalf of the purchaser; and under sub-section (3) of section 4, in any prosecution under this section it shall be no defence to allege that the seller was ignorant of the nature, substance or quality of the article of food sold by him or that the article was not defective in all three respects, namely, nature, substance and quality.

Provided that theseller shall not be deemed to have committed an offence under this section if he proves to the satisfaction of the Court -

(a) that the article sold was purchased or obtained as agent by him a- the same in nature, substance and quality, as that demanded by the purchaser and with a written warranty to the effect that it was of such nature, substance and quality;

(b) that he had no reason to believe at the time when he sold it that the article was not of such nature, substance and quality as aforesaid; and

(c) that he sold it in the same state in which he purchased it.

The words "causes to be sold" in clause (a) of section 4(1) clearly cover the sale of an article of food by a master through his servant and the liability of the master for the adulteration done by his servant is absolute. Consequently, the Secretary or the Manager of the Society would be liable for the sale of adulterated milk by the servant althoughsuch adulteration was done by the servant after he has left the shop; andthe precautions taken by the Secretary or the Manager would not save him from such liabilit. According to theprovisions of Milk and Dairies (Amendment) Act, 1922, (12-13, George V-Ch. 54), "a defendant in any prosecution for an offence related to the sale of milk may not be convicted in respect of a sample taken after the milk has left his custody and control,

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if he proves that the receptacle in which the milk contained was effectively closed and sealed at the time when it left his custody and control but was not so closed and sealed when it reached the person by whom the sample was taken". (See para.390of Halsbury Vol. XV). If a similar provision is made in the Bombay Prevention of Adulteration Act, 1925, the Secretary or the Manager of the Society would escape liability. However, having regard to the standard of honesty among such class of servants employed for the ~~sale~~ distribution of milk it may not be desirable to mitigate the absolute liability along the lines of the English law in regard to the sale of milk which is of vital importance in nation-building particularly for the younger generation. This is, however, for the administrative department to decide.

d./- P.M.L.
Remembrancer of Legal Affairs.

U.R. to the Milk Commr.'s Office, No. 589,
dated the 16th January 1948.

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